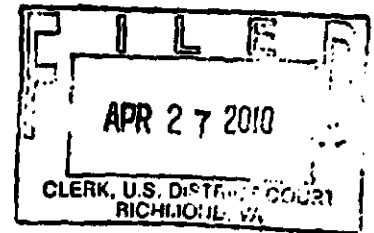IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Virginia

APEX DIGITAL, INC.,

     Appellant,

v.   Civil Action No. 3:10cv200

CIRCUIT CITY STORES, INC.,
et al.,

     Appellees.

ORDER

Having reviewed and considered MOTION OF APEX DIGITAL,

INC. FOR LEAVE TO APPEAL (Docket No. 1), and finding that:

(1)   the appeal involves a controlling question of

     law, that question being the applicability of 11

     U.S.C. § 502(d) to administrative expense claims

     made pursuant to § 503(b)(9), that is essential

     to a determination of whether the appellant can

     recover on its § 503(b)(9) claims;

(2)   the question presents substantial ground for a

     difference of opinion, that difference of opinion

     being explicitly identified in the Bankruptcy

     Court's Memorandum Opinion of January 6, 2010,

     discussing two distinct lines of authority on the

question that come to irreconcilably different conclusions; and

(3) immediate appeal would materially advance the termination of the litigation, because it would allow the court to quickly, efficiently, and equitably determine the rights and remedies of the parties to the underlying bankruptcy petition;

it is hereby ORDERED that the Appellant's motion for leave is granted. The issues are adequately presented in the briefs and oral argument would not materially aid the decisional process.

It is further ORDERED that, for the reasons set forth on the record during the conference call of April 22, 2010, the parties shall file briefs on the merits of the appeal as follows: the Appellant shall file its opening brief no later than May 6, 2010; the Appellees shall file their consolidated response brief by May 20, 2010; and the Appellant shall file its reply by June 3, 2010.

It is further ORDERED that a status conference, conducted via conference call to be arranged by Appellee

Circuit City, shall be held on April 29, 2010, at 11:00
A.M.

     It is so ORDERED.

                               /s/   REP
                              Robert E. Payne
                              Senior United States District Judge

Richmond, Virginia
Date: April 23, 2010